

REMARKS / ARGUMENTS

Reconsideration of this application, as amended is respectfully requested. The following remarks are responsive to the Office Action mailed on December 27, 2006.

Claims 40-45 are now pending in the present application, of which Claim 40 is independent.

Claims 34-39 have been withdrawn from consideration.

Claim 40 has been amended.

No new matter has been added.

Elections/Restrictions

Applicants note that Claims 34-39 have been withdrawn from consideration. Applicants disagree with the Examiner's assertion that Claims 34-39 are directed at an independent or distinct invention, however.

Claim Objections

The Examiner objected to Claim 40 because of the following informality, "patient's" should be "patient's". As such, Applicants have amended Claim 40 to properly read "patient's". Therefore, Applicants respectfully request the withdrawal of the objection to Claim 40.

Claim Rejections - 35 USC § 112

The Examiner has rejected Claims 40-45 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Applicants respectfully traverse.

The Examiner claims that recitation of "the palate" in claim 40 lacks antecedent basis. However, the first element of Claim 40 reads, "acquiring at least one digital image representing at least a portion of upper teeth and *a palate* of the patient." As such, Applicants contend that "the palate" does have sufficient antecedent basis and respectfully request the withdrawal of the §112, second paragraph, rejection based on "the palate."

The Examiner contends that it is unclear if “for receiving posterior teeth on one side of the palate” includes each of the portions. Applicants note that they have amended Claim 40 to read, “for receiving posterior teeth on its respective side of the palate.” Therefore, Applicants respectfully request the withdrawal of the §112, second paragraph, rejection based on this section of Claim 40.

The Examiner also states that it is unclear whether “at least one digital image that capture at least some of the patient’s teeth” is different from what is acquired. Applicants note that they have amended Claim 40 to read, “*the* at least one digital image that captures at least some of the patient’s teeth.” As such, Applicants respectfully request the withdrawal of the §112, second paragraph, rejection based on this section of Claim 40.

Finally, the Examiner argues that it is unclear what is meant by “a successive tooth arrangement of the plurality of cavities.” Applicants have amended Claim 40 to read, “adjusting the expansion member on a periodic basis to vary the spacing between the first and second portions to expand the patient’s palatal arch while repositioning the teeth.” Therefore, Applicants respectfully request the withdrawal of the §112, second paragraph, rejection based on this section of Claim 40.

In sum, Applicants respectfully request the withdrawal of all the §112, second paragraph, rejections of Claims 40-45.

Claim Rejections - 35 USC § 103

The Examiner has rejected Claims 40-45 under 35 U.S.C. § 103(a) as being unpatentable over Truax (U.S. Patent Number 5,242,304) in view of Pavloskaia et al. (U.S. Patent Number 6,463,344). Applicants respectfully traverse.

The Examiner contends that Truax discloses a method for making an appliance and expanding a palatal arch of a patient comprising acquiring a digital (computerized optical) scan representing the mouth of the patient, fabricating a first portion and a second portion, each having a plurality of cavities capable of receiving the posterior teeth and palatal portion extending toward a centerline of the palate, the plurality of cavities to receive the posterior teeth, to secure the appliance, and to reposition teeth, coupling an expansion member between the first and second portions, placing the arch expander in the mouth, and adjusting the expansion member to vary the spacing between the first and second portions to expand the palatal arch and reposition the teeth; however, Truax does not show digital imaging. The Examiner continues by saying that

Pavloskaia teaches a method for making dental appliances comprising digital visualization of dental scans. It would have been obvious to one in the art, according to the Examiner, to modify the method of Truax to include the step of Pavloskaia in order to enhance the treatment of a patient by simplifying and improving making of an appliance as well as saving money and time as taught by Pavloskaia.

Applicants note that they have amended Claim 40 to include the following element, "wherein the expansion member comprises at least one elastic band and at least one holder." The support for this amendment comes from paragraph 28 of the published application. Neither Truax nor Pavloskaia disclose the use of an expansion member that comprises at least one elastic band and at least one holder. As such, each and every element of Claim 40 is not taught, disclosed, or suggested by Truax and Pavloskaia, either alone or in combination. Therefore, Applicants respectfully request the withdrawal of all §103(a) rejections of Claims 40-45.

CONCLUSION

In view of the foregoing, Applicants submit that the present application is now in condition for allowance. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

The Examiner is invited to contact Applicants' attorney, Dusty Vogelpohl, via telephone at (650) 328-8500, if it would further the allowance of the present application. Applicants further submit that no new matter has been added.

Please charge any deficiencies or any corresponding fee, and credit any overpayments to Deposit Account No. 50-2638, referencing Attorney Docket No. 072170-202101/US.

Respectfully submitted,

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/Dusty Vogelpohl/

Dusty Vogelpohl
Reg. No. 55,703

GREENBERG TRAURIG, LLP
CUSTOMER NUMBER 56188
1900 University Avenue, Fifth Floor
East Palo Alto, CA 94303
Phone: (650) 328-8500
Fax: (650) 328-8508
E-Mail: vogelpohld@gtlaw.com